

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

Petition of WISP Seeking Declaratory)	
Ruling that City of Fountain Valley's)	
Denial of a Conditional Use Permit allowing)	___ Docket No. 19-___
Operation of Wireless Facilities is Precluded)	
By the Commission's OTARD Rule)	
)	
To: Office of the Secretary)	
Attn: Media Bureau)	

DECLARATION OF DAVID RODECKER

1. My name is David Rodecker. My business address is Rodecker Slater, LLC, 10175 Slater Avenue #200, Fountain Valley, California 92708.
2. The purpose of this Declaration is to affirm the truth and accuracy of the facts set forth in the Petition for Declaratory Ruling filed herewith by the Petitioners.
3. I am a Partner of the Petitioner, Rodecker Slater, LLC ("RS") and Managing Partner of Wisp.net ("WISP") for which my responsibilities include planning and operation of the sitting fixed wireless communication facilities.
4. In December 2004, I created a company called Relevant Ads, Inc. ("RA"), which provides marketing and related online services for business customers nationwide. Since September 2011, my company has relied on fixed wireless internet connection from TPx (formally TelePacific Communications), headquartered in Los Angeles.
5. In November 2014 RS acquired a three-story office building (the "Building") located at 10175 Slater Avenue in Fountain Valley, California.

6. Since RS acquired the Building, RA (and therefore WISP) has been a tenant in the Building. In order to establish basic internet connectivity with the relay point located about ten miles from the Building in the town of Tustin, initially RS mounted on the Building's rooftop a 40-foot monopole and attached a NanoBeam radio receiver to the pole. Exhibit A is a photograph of the rooftop facilities as initially installed. However, this structure provided a variable connection speed of 10 Mbps and proved to be less than adequate for the bandwidth needs of RS and its tenants.

7. In April 2016, I co-created a company called Server ISP ("SISP") to provide server hosting and IT support services for RS and its tenants of the Building including RA, Serenity Lodge (aka The District Recovery Center), Q Dermatology and the Southern Californian Indian Center.

8. In order to establish and maintain the unobstructed 1 Gbps wireless connection required for service, the Building required a stronger receiver mounted on a stable structure. Therefore, in January 2017 RS purchased and installed a 40-foot tall 3-post Rohn tower, on the Building's rooftop and attached a Powerbeam radio reception device to the mast. The Rohn tower was installed on a pre-existing steel platform located on the rooftop that had previously been used to house a cellular repeater site. The rooftop tower and antenna were located on property owned and exclusively controlled by RS and used for the purpose of receiving and distributing the fixed wireless internet to customers located within the Building, including tenants and RS itself.

9. In April 2017, SISP began providing wireless (WiFi) Internet access service not only to Building tenants, but also to the parking area surrounding the Building. For this purpose, SISP purchased an Ubiquiti AM-M-V5G-Ti radio and attached the device to the rooftop mast. This device provides high-power WiFi connectivity over a range of up to 12,000 feet. The rooftop facilities at the Slater Avenue Building were originally designed and installed for the sole purpose

of receiving fixed wireless services and distributing wireless services to end-users located in or in the immediate area of the Building. There was no intention or plan to protect a carrier hub transmission facility from local regulations by locating the facility at a customer location.

10. In 2017 SISP sold its assets to a newly created entity called Wisp.net (“WISP”), which functioned as RS’s fixed wireless Internet service provider (<https://wisp.net/#home>). WISP is a d/b/a of Relevant Ads, Inc., of which I am the majority owner and the Managing Partner. Relevant Ads, doing business as WISP, is customer of TPx’s and is a tenant in the Building.

11. In June 2017, WISP first began providing fixed wireless service to customers who are located close to the Building but are not tenants. WISP’s off-site customers included Silky Sullivan’s, a restaurant located across the street from the Building, and the law office of Dan Hopper located just down the street at 10221 Slater Avenue. Because both the restaurant and the law office are within the coverage range of WISP’s WiFi service, no additional equipment was attached to the mast for the purpose of serving the restaurant and law office customers.

12. In October 2017, RS installed several point-to-multipoint radio devices on the rooftop mast, including three Ubiquiti PowerBeam 500 AC ISO devices, one Ubiquiti Rocket AC 5Ghz Prism device and one Rocket Dish RD-5G300-LW+ device. These devices were added in order to enable WISP to provide fixed wireless service to customers in southwest Fountain Valley that were neither tenants within the Building nor within range of WISP’s WiFi service. In December 2017, WISP added customers to the northwest of the Building, including the City of Fountain Valley’s Sports Center. Additional radio devices were attached to the mast for the purpose of providing service to these customers, as well as customers located to the East and the South. As used in this Declaration, the term “Facilities” collectively refers to the mast mounted on the pre-existing platform on the rooftop of the Building at 10175 Slater Avenue and all attached devices.

The Facilities are owned by RS and leased to WISP, which is, like RS itself, a tenant of the Building.

13. As mentioned in the preceding paragraph, one of WISP's customers was the City of Fountain Valley's Sports Center. In order to receive the wireless signal over an unobstructed line-of-sight, the Sports Center required a 40-foot monopole on its rooftop and attached radio reception devices. See attached Exhibit D entitled "FV Sports Center 40-foot monopole.jpg" and Exhibit E "FVSC – Monopole Google Street View.png." These devices allowed the Sports Center to not only receive WISP's wireless signal but also to distribute WiFi service to users of the Sports Center's and the Fountain Valley Sports Park facilities. See attached Exhibit F entitled "WISP-FV-City-MOU-Wifi.pdf" and "Memorandum of Understanding: WISP & City of Fountain Valley.

14. One month later, on December 27, 2017, WISP notified the City about the opportunity to improve the quality of internet service at the City's Park and Sport Center by replacing the existing 40-foot monopole on the Sports Center building with a 40-foot 3-post Rohn tower. WISP offered to provide this upgrade at no cost. The City had not objected to installation of the 40-foot monopole, but in response to WISP's upgrade offer, the City Manager suggested that WISP should offer to pay rent if it intended to attach additional relays to service customers who were not users of the Sports Center and Sports Park area.

15. On January 19, 2018, the City's Park Director notified WISP that the monopole upgrade at the Sports Center required prior approval by the City Planning department and to expect further communication from that group. See attached Exhibit G entitled "WISP Mail – FVSC tower upgrade.pdf." Then, on February 8, 2018, the City notified RS that WISP's own Facilities at Slater Avenue required a permit as a "Wireless Telecommunication Facility" under the City's Ordinance FVMC 21.28 as amended (referred to herein as the "Ordinance", a copy of which is attached as

Exhibit B and change amendment in Exhibit O). See attached Exhibit H entitled “WISP Mail – Wisp – Antenna.pdf.”

16. In response to the City’s objection, on April 4, 2018, RS provided the City with design plans describing on how the Building’s rooftop Facilities could be modified to conform to aesthetic guidelines provided under the Ordinance. On the following day (April 5, 2018) the City responded that the Facilities would not meet qualifications for a Wireless Telecommunication Facility permit because they did not fully meet the Ordinance’s stealth requirements and could not be located on a rooftop unless it was fully screened. See attached Exhibit I entitled “WISP Mail – Rodecker wireless facility.pdf.”

17. On April 12, 2018, RS responded to the City asserting that the Ordinance did not apply because (a) the Ordinance expressly applies to facilities used to transmit or receive “cellular technology,” and WISP’s Facilities were used exclusively for the reception and transmission of fixed wireless service – which is not “cellular technology;” and (b) enforcement of the Ordinance with regard to the Facilities is preempted under the Federal Communications Commission’s (“FCC”) OTARD rule. See attached Exhibit J entitled “Appeal of Citation 20180405.pdf.”

18. On July 23, 2018, the City’s Planning Commission held an Appeal Hearing to decide the issue. However, a decision was not made by the Appeal Officer at the hearing. Both sides attempted to reach a compromise settlement, but that attempt was unsuccessful because one member of the Planning Commission insisted that none of RS’s proposed modifications were acceptable and that the Ordinance required removal of the Facilities in their entirety unless and until they were properly permitted as a Wireless Telecommunications Facility under the Ordinance.

19. On September 18, 2018, RS requested assistance from the City Council during a Public Meeting, and the City Council directed the City Manager to take action to resolve the issue. On September 21, 2018, the City Manager notified (*via* e-mail, see attached Exhibit K entitled "City-Continuance.pdf") RS that he would allow RS to continue to operate the Facilities under a Conditional Use Permit with a Variance. Accordingly, RS filed an application for a Conditional Use Permit ("CUP") with Variance within one week of the City Manager's request.

20. On October 8, 2018, the City returned RS's application and notified RS that the CUP would be issued only after the Planning Department had provided approval and clearances based on a positive vote on the plan from the Planning Commission. See page 1 of attached Exhibit L entitled "Permit Corrections.pdf." On October 10, 2018, the City Planning Commission held a Public Hearing on WISP's request for a CUP with Variance. Several members of the public, including all of the neighboring businesses and property owners surrounding the Building, expressed support for WISP's request, with no dissenting opinion.


21. On November 11, 2018, the City Planning Commission voted 3-0 to approve and issued to WISP CUP No. 1853 and Variance No. 329, with one member abstaining because he was a WISP customer. See attached Exhibit M entitled "City Planning Commission Minutes 20181128.pdf." However, within two months, the City Council reversed course. On December 4, 2018, the City Council voted to review the Planning Commission's approval of WISP's CUP and Variance by holding another Public Hearing.

22. On January 22, 2019, the City Council held a Public Hearing on the appeal. Over 50 members of the public, including the OC 405 (County of Orange Freeway) expressed support for the CUP and Variance with no dissenting opinion. Nonetheless, the City Council voted to continue the matter to a later session.

23. On July 16, 2019, the City Council voted 3-1-0 to deny the CUP and Variance, citing the lack of stealthing required under the Ordinance. (The minutes of the July 16 meeting are not yet posted as of the date of this Petition. Footage of the meeting can be viewed here: <https://www.youtube.com/watch?v=D7hp74moJcw>.) RS received a letter from the City's Planning Director dated July 24, 2019 advising RS that it "may no longer operate a wireless facility that operates as a hub-and-relay antenna on the Rodecker building property (10175 Slater Avenue)" and that it is required, by August 23, 2019, to remove the Facilities in their entirety or remove those portions that operate as a hub and relay system, leaving only the "receive-only antenna" for "personal use at the Rodecker Building." See attached Exhibit N entitled "7.24.19 LTR.pdf.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: August 15, 2019


David Rodecker